

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 98-0144P**

**Sales and Use Tax  
Calendar Years 1994, 1995, 1996**

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**ISSUE(S)**

**I. Tax Administration – Penalty**

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer protests the penalty assessed on an audit completed on December 3, 1997.

Taxpayer failed to self-assess and remit use tax on clearly taxable items, primarily general supplies and to collect and remit sales tax for sales of food for immediate consumption. Taxpayer is an Indiana corporation and registered with the Department as a Retail Merchant engaged in the wholesale trade of motor vehicles. It operates an auction house, predominantly for auto dealers, banks, leasing companies; etc. to sell used motor vehicles. In addition to the operation of an auction house, taxpayer has a repair garage and clean up facility including an automated high-pressure car wash. The repairs garage and clean up facility are not open to the public but offered exclusively to the dealers selling vehicles in their auctions. Taxpayer operates a concession stand only on auction days.

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### **DISCUSSION**

Taxpayer requests a waiver of penalty and states it is inappropriate because of their interpretation or lack of understanding of the regulations regarding sales tax and taxable purchases. Further they state they simply underreported the amount of sales tax due because of non-inclusion of transaction which they were not aware of as being taxable and their intent was not to purposefully misrepresent the amount of taxable transactions.

Taxpayer's audit revealed that no use tax was self-assessed in all years of the audit. Taxpayer files monthly ST 103's, which clearly have a space for use tax to be remitted.

The Indiana Use tax laws are clear in the Indiana Code and Regulations. The taxpayer was negligent in failing to self-assess and remit use tax due in 1994, 1995, and 1996.

### **FINDING**

Taxpayer's protest is denied.